

NOV 22 2019

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT
FIFTH CIRCUIT
LYLE W. CAYCE, CLERK

Before: OWEN, Chief Judge, JONES, SMITH, HAYNES, GRAVES,
HIGGINSON, WILLETT, HO, DUNCAN, BARBIER, DICK,
FOOTE, BROWN, OZERDEN, GODBEY, ROSENTHAL,
GILSTRAP, and MARTINEZ

COMPLAINT NO. 05-13-90046

MEMORANDUM OF REASONS

Complainant, an attorney, filed a complaint of judicial misconduct against the subject United States District Judge under Rule 6, Rules for Judicial-Conduct and Judicial-Disability Proceedings (“Rules”). Complainant alleged that the judge “had a racially motivated, hateful, personal vendetta” against him, as allegedly demonstrated by the judge’s remarks in hearings in two lawsuits where Complainant was counsel of record. Then-Chief Judge Carl E. Stewart referred the complaint to a Special Committee for investigation and recommendations to the Judicial Council pursuant to Rules 11(a)(4) and (f).

The Special Committee conducted an investigation consisting of review of the complaint, the judge’s response, the complete transcripts of hearings in the two lawsuits, and also of available audio recordings of hearings. After investigation, the Special Committee submitted its report to the Judicial Council. Although the Special Committee did not find that the judge exhibited racial bias toward Complainant, it did find reason for concern over the overall harshness and critical tone of many of the judge’s comments directed at Complainant. It also felt that the judge’s initial response demonstrated insensitivity to the seriousness of the complaint. The Committee delegated two of its members to meet with the judge in person and convey its concerns. During this meeting, the judge was cordial and respectful, listened to and acknowledged the issues raised by the complaint, was apologetic for his

conduct, and expressed a sincere determination to modify his behavior. The judge then submitted a supplemental written response to the Special Committee, in which he agreed that his tone “was unnecessary and heavy-handed,” and indicated that he “regret[ted] having spoken as [he] did.” He stated that he would “avoid comments that can be taken as hostile in the future. ... No one will experience bias in my court. I am committed to watching my tone and substance in the future so no one will feel that way either[.]” The Special Committee found the judge’s contrition and representations to be sincere.

Based on the judge’s pledge to avoid future comments and actions that could be perceived as hostile or biased, the Special Committee recommended that the Judicial Council conclude the proceeding under Rule 20(b)(1)(B) because appropriate corrective action has been taken. The Judicial Council accepts this recommendation. An order concluding the proceeding pursuant to Rule 20(b)(1)(B) has been entered simultaneously herewith.

For the Council:

Date: November 15, 2019



Chief United States Circuit Judge